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Attorneys for Defendants New York Life Insurance
Company and New York Life Insurance and
Annuity Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OLGA ORTMANN, as an individual
and on behalf of all others similarly
situated.

Plaintiff,

V.

NEW YORK LIFE INSURANCE COMPANY, a corporation; NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION, a corporation; and DOES 1 through 20, inclusive.

Defendants

Case No. 3:07-CV-02506-WHA

**DEFENDANTS NEW YORK LIFE
INSURANCE AND NEW YORK
LIFE INSURANCE AND ANNUITY
CORPORATION'S NOTICE OF
MOTION AND MOTION TO
STRIKE**

[FED. R. CIV. PROC. 12(f)]

Judge: Hon. William Alsup
Date: July 5, 2007
Time: 8:00 a.m.
Courtroom: 9, 19th Floor

1 **TO THE UNITED STATES DISTRICT COURT FOR THE**
 2 **NORTHERN DISTRICT OF CALIFORNIA, AND TO PLAINTIFF OLGA**
 3 **ORTMANN:**

4 **PLEASE TAKE NOTICE THAT** on July 5, 2007, at 8:00 a.m., or as soon
 5 thereafter as counsel may be heard in Courtroom 9 of the above-entitled Court,
 6 located at 450 Golden Gate Avenue, San Francisco, California 94102-3483,
 7 pursuant to Federal Rule 12(f), Defendants New York Life Insurance Company and
 8 New York Life Insurance and Annuity Corporation (“Defendants”) will and hereby
 9 do move for an order striking the following portions of Plaintiff’s Complaint
 10 (“Complaint”) on the grounds that the Complaint contains irrelevant and/or
 11 improper matter:

12 **ANY AND ALL LANGUAGE CONCERNING PUNITIVE AND**

13 **EXEMPLARY DAMAGES**

14 **SECOND CAUSE OF ACTION**

- 15 1. Paragraph 29, in its entirety:

16 “Defendants committed the acts alleged herein knowingly
 17 and willfully, with the wrongful and deliberate intention
 18 of injuring Plaintiff and members of the Plaintiff Class,
 19 from improper motives amounting to malice, and in
 20 conscious disregard of Plaintiff’s rights and the rights of
 21 the Plaintiff Class. Plaintiff and members of the Plaintiff
 22 Class are thus entitled to recover nominal, actual,
 23 compensatory, punitive, and exemplary damages in
 24 amounts according to proof at time of trial, but in amounts
 25 in excess of the minimum jurisdiction of this Court.”

THIRD CAUSE OF ACTION

2. Paragraph 36, in its entirety:

“Defendants committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and members of the Plaintiff Class, from improper motives amounting to malice, and in conscious disregard of Plaintiff’s rights and the rights of the Plaintiff Class. Plaintiff and members of the Plaintiff Class are thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court.”

FOURTH CAUSE OF ACTION

3. Paragraph 43, in its entirety:

“Defendants committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and members of the Plaintiff Class, from improper motives amounting to malice, and in conscious disregard of Plaintiff’s rights and the rights of the members of the Plaintiff Class. Plaintiff and members of the Plaintiff Class are thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court.”

PRAYER FOR RELIEF

4. Prayer for Relief, paragraph 13, page 24, line 25, in its entirety: "For punitive and exemplary damages."

1 **CERTAIN LANGUAGE CONCERNING A FOUR YEAR STATUTE OF**
 2 **LIMITATIONS**

3 **SECOND CAUSE OF ACTION**

4 5. Paragraph 27, page 11, lines 14 through 15 "during the four (4) years
 5 preceding the filing of the Complaint."

6 **THIRD CAUSE OF ACTION**

7 6. Paragraph 34, page 13, lines 6 through 7: "during the four (4) years
 8 preceding the filing of this Complaint."

9 **FOURTH CAUSE OF ACTION**

10 7. Paragraph 41, page 15, lines 1 through 3: "During the four (4) years
 11 preceding the filing of this Complaint."

12 **ANY AND ALL LANGUAGE CONCERNING PENALTIES PURSUANT TO**
 13 **SECTION 558 OF THE CALIFORNIA LABOR CODE**

14 **FIFTH CAUSE OF ACTION**

15 8. Paragraph 48, page 16, lines 21 through 22: "Additionally, Plaintiff
 16 and members of the Plaintiff Class are entitled to penalties under *Labor Code* §
 17 558.

18 **ANY AND ALL LANGUAGE CONCERNING CLAIMS FOR**
 19 **DISGORGEMENT THAT CANNOT BE BROUGHT UNDER THE UNFAIR**
 20 **COMPETITION LAW**

21 **TWELFTH CAUSE OF ACTION**

22 9. Paragraph 85, page 23, lines 21 through 22, the words: "and profits to
 23 be disgorged from defendants."

PRAYER FOR RELIEF

10. Paragraph 4, page 24, line 5, the words: "and disgorged profits from the unlawful business practices of defendants."

This motion is based upon this notice, the accompanying memorandum of points and authorities, the accompanying proposed order, all pleadings and papers on file in this action, and on such other matters as may be presented to the court at the time of hearing.

Dated: May 24, 2007

MORGAN, LEWIS & BOCKIUS LLP

By /s/ JILL A. PORCARO

Jill A. Porcaro
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NEW YORK LIFE INSURANCE
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